UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 22-11068 (JTD)
FTX TRADING LTD., *et al.*,	
	(Jointly Administered)
Debtors.	
ALAMEDA RESEARCH LLC, FTX TRADING LTD., WEST REALM SHIRES, INC., AND WEST REALMSHIRES SERVICES INC., (D/B/A FTX, US),	
Plaintiffs,	Adv. Proc. No. 23-50419 (JTD)
v.	
DANIEL FRIEDBERG,	
Defendant.	
ALAMEDA RESEARCH LTD., AND FTX TRADING LTD.,	
Plaintiffs,	
-against-	Adv. Proc. No. 23-50444 (JTD)
PLATFORM LIFE SCIENCES INC., LUMEN BIOSCIENCE, INC., GREENLIGHT BIOSCIENCES HOLDINGS, PBC, RIBOSCIENCE LLC, GENETIC NETWORKS LLC, 4J THERAPEUTICS INC., LATONA BIOSCIENCES GROUP, FTX FOUNDATION, SAMUEL BANKMAN-FRIED, ROSS RHEINGANS-YOO, AND NICHOLAS BECKSTEAD,	Courtroom No. 5 824 North Market Street Wilmington, Delaware 19801
Defendants.	
	Tuesday, October 24, 2023
	10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Adam Landis, Esquire
Kimberly Brown, Esquire
LANDIS RATH & COBB LLP
919 Market Street, Suite 1800
Wilmington, Delaware 19801

Andrew Dietderich, Esquire
Brian Glueckstein, Esquire
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004

For the U.S. Trustee: Juliet Sarkessian, Esquire
Jonathan Lipshie, Esquire
OFFICE OF THE UNITED STATES TRUSTEE
844 King Street, Suite 2207
Lockbox 35
Wilmington, Delaware 19801

(APPEARANCES CONTINUED)

Audio Operator: Jermaine Cooper, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (CONTINUED):

For Bloomberg L.P.:	KatieLynn Townsend, Esquire REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS 1156 15th Street NW Suite 1020 Washington, DC 20005
For the Official Committee of Unsecured Creditors:	Robert Poppiti, Jr., Esquire YOUNG CONAWAY STARGATT & TAYLOR LLP One Rodney Square 1000 North King Street Wilmington, Delaware 19801
For the Ad Hoc Committee:	Matthew Harvey, Esquire MORRIS NICHOLS ARSHT & TUNNELL LLP 1201 North Market Street Suite 1600 Wilmington, Delaware 19801
For Emergent Fidelity Technologies:	Matthew Ziegler, Esquire MORGAN LEWIS & BOCKIUS LLP 101 Park Avenue New York, New York 10178

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(Proceedings commence at 10:02 a.m.)

(Call to order of the Court)

THE COURT: Good morning, everyone. Thank you. Please be seated.

Mr. Landis.

MR. LANDIS: Good morning, Your Honor. And my it please the Court, Adam Landis from Landis, Rath & Cobb on behalf of FTX Trading Limited and its affiliated debtors.

We are here on what started out as a rather extensive agenda, but now has been narrowed down to just two matters going forward.

We appreciate Your Honor's entry of orders in connection with Items Numbers 7, 8, 9, and 10. So those matters need not go forward.

We only have two matters that will proceed today. The first is Item Number 11, which is the second joint motion of the debtors and the committee of unsecured creditors for an order authorizing the redaction or withholding of certain confidential information. That will be handled by Mr. Glueckstein of Sullivan & Cromwell.

The second is Item Number 12, which is the debtors' motion for entry of an order granting leave from Local Rule 3007-1(f) in connection with substantive claim objections. That will be handled by Ms. Brown of my office.

But before we get to those matters, Mr. Dietderich

of Sullivan & Cromwell has an update for the Court --

THE COURT: Okay.

MR. LANDIS: -- so I'll yield --

THE COURT: Thank you.

MR. LANDIS: -- the podium to him.

MR. DIETDERICH: Thank you. Thank you, Mr. Landis.

Good morning, Your Honor. Your Honor, we, believe it or not, are approaching the first anniversary of the case and --

THE COURT: I do believe.

MR. DIETDERICH: Exactly.

(Laughter)

MR. DIETDERICH: Exactly. It's been a very long, but productive year.

I'd like to take a moment, if I could, to put in perspective, briefly, what this Court's protection has meant for creditors.

On the eve of our filing, if you go back in time to November 10th, global creditors faced the possibility, the real possibility of a near total loss. This was not a simple bank run. Banks keep records and know where their assets are. This was different. Regulators were seizing assets. Insolvency filings had started in the Bahamas and Australia. The founders of the company were facing criminal prosecution. The general counsel couldn't be found. Companies in the

group had no books and records of significance and many had never had board meetings. What digital assets remained had been left with little protection against theft or hacks.

And what changed everything was the filing for bankruptcy in this Court. There was no other choice at the time, there was nowhere else to go. The automatic stay and the U.S. bankruptcy system and its openness to foreign debtors made this result possible.

We're asked constantly if we can project creditor recoveries. We cannot yet, not with certainty. But I will say this: They could easily have been pennies had FTX been subject to separate liquidations, fire sales, government seizures, and hacks all over the world; there could have been nothing left.

Now the central actor in this rescue is John Ray, who made the call to file over a hundred companies for bankruptcy after three hours on the job. But he has not been alone. We have a very active board of directors with whom we spend several hours a week on FTX matters for over a year.

And we have an extremely engaged official committee of creditors, one of the most engaged I've experienced in my career. The individual members have devoted countless hours to this case, countless personal time, many of them without compensation.

And we have active and passive customer groups.

Your Honor may note that many of them sued us at the beginning of the case, filed adversary proceedings on customer property issues. Well, our solution to that, our invitation, which they accepted, was to come into the kitchen of this case and help us formulate a plan, and the result has been a better plan and a better process.

So, today, Your Honor, I'm very pleased to speak for the debtors to say we appreciate all the work by so many parties that have created this -- that have taken this very, very complicated case and resulted in, although still substantial time and demands from Your Honor, a relatively small amount of court time compared to the amount of time that has been spent by the professionals out of court. And I think that's a testament to everybody's attitude and all of the meetings and negotiations that we've had over this year.

So where do we --

THE COURT: I was surprised by that myself, how much --

MR. DIETDERICH: Well, it --

THE COURT: -- how little there's been litigation so far. But I feel it might be coming down the road, we'll see.

MR. DIETDERICH: It -- I would -- I do not want to jinx anything by saying it will continue, and we should always be ready to -- what is it? You know, prepare for the

worst, but hope for the best. We've certainly prepared a lot more litigation than Your Honor has seen.

So where do we stand? Well, there's a couple of things, I think, to bring to the Court's attention:

First, we have a proposed architecture now for a plan of reorganization, and that architecture, I'm pleased to say, is supported by every constituency with whom we've consulted about the plan structure.

The plan is the result of public solicitation of comments from stakeholders, an unusual step that we took, given the complexity of the case and its public significance. Your Honor will note that we circulated a draft plan -- filed a draft plan publicly on July 31st and solicited public comments on a number of study questions for the group. Well, we have answers and dialogue and conversations on each of those questions and we think they've been fairly resolved.

We have a proposed settlement of customer property issues in the case. The settlement has two key components: One is in the plan and the other is an offer to settle preferences because the customer property issues, of course, relate to both what we're doing in the plan of reorganization and a defense customers might assert to preferences. Neither of those settlements is being proposed to the Court today. But given their significance, I'll spend just a moment on them.

The plan settlement follows the architecture in the draft plan. The plan creates three pools of value: One for the dot-com customers, one for the U.S. customers, and a general pool. And I'm excluding from this, Your Honor, certain pools of value for separate subsidiaries that have their own logic to them. But in the main case, there's three of these pools of value.

Each customer pool includes the assets that were segregated and identifiably segregated for customers at the commencement of the case. But there's a shortfall in each pool, the assets that are still there are less than the customer entitlements against those assets.

So also in each customer's pool is what we call a "shortfall claim." And the shortfall claim is a claim against the general pool for the return of the missing money. That shortfall claim has been the crux of the negotiation we've had with customers over the last months because there's a question: How should it rank? Is it a general unsecured claim, side by side with other customers, or is the nature of the facts of our case such that the shortfall claim really should be seen as a constructive trust claim or a floating charge imposed for equitable reasons on the rest of the estate? And there's strong arguments on both sides. There's also tracing questions that are raised.

Well, the negotiated solution to this question is

to create in the plan of reorganization a modified priority for the shortfall claims. And the compromise we'll be proposing in the plan, with the support of all the people that were involved, is that 66 percent of those shortfall claims have a priority, effectively like an equitable lien or a floating charge on all the global value. And the remaining portion of the shortfall claim is a deficiency claim that ranks equal with the general unsecured creditors.

The -- that negotiation was hard fought. We think we have a strong record for it. Participating in it were not just representatives of customers in both of the pools, but also the debtors and the general -- the creditors' committee on behalf of general unsecured creditors.

The preference settlement, Your Honor, is a general offer that the debtors have agreed to make in the plan of reorganization as part of the balloting process. That offer is an offer to customers that are defined as "eligible customers," and we'll get to that in a moment. Eligible customers are given the opportunity to accept a preference offer of settlement from the debtors, which is calculated in a particular negotiated way.

And that calculation focuses on the change in trading activity that happened nine days before the petition date -- was filed, and identifies a nine-day period where there's a preference -- kind of a modified preference look-

back period. And the preference settlement is an offer for 15 percent of the net exposure entering that period of time. And customers are permitted to settle that preference exposure in their ballot, which will be identified. It will be identified, both the amount of their claim and the amount of their preference exposure.

They're permitted to voluntarily elect to settle that preference exposure, either by credit against their claim or by payment of cash. Customers don't have to take that offer, Your Honor, they can say no, in which case it will be resolved in the ordinary course.

Now there's a large number of customers that may not be eligible for that settlement. We've excluded from that settlement, not just obvious categories of affiliates and insiders, but in the public disclosure in the papers we'll file, there's a categorization of other excluded customers, which includes, importantly, customers against whom the estate has some other cause of action unrelated to preferences, or customers for whom the facts and circumstance suggest to the debtors that the settlement would not be fair to the estate. So that process will unfold, we'll have papers for it.

The other thing I would say, Your Honor, just to be clear, to get the terms right, we have a *de minimis* concept in the preference settlement, so that customers with less

than $250,000 of preference exposure are excluded. The customers are, you know, cautioned not to rely on my statements today about this but to read the language that has been now -- is now public in the termsheet that we circulated with the plan support agreement.

The next item, Your Honor, is the plan support agreement. We have one. This is also not something we'll be seeking court approval of. It -- the debtor is not bound by it. But it is an important step forward because we have plan support commitments from the customers that had filed the adversary proceedings, as well as support from the official committee of creditors. So that's a great milestone for us.

The plan support agreement does have some milestones, but the milestones won't surprise Your Honor. They're the same milestones we've been using in this case from the beginning, in terms of our plan time table, which involves, to simplify:

A plan and disclosure statement that we intend to file by December 16th;

A disclosure statement hearing in March;

And confirmation of the plan really as soon as we can, but probably in the middle or near the end of the second quarter.

We also, Your Honor, have -- are trying and have -- I think are also making progress on some of the other items

that we've identified as matters that would otherwise result in difficult or complicated plan litigation, and I want to run through those briefly, as well.

The first is our dispute with the JPLs in the Bahamas. Well, I'm pleased to say we are also, under the guidance of Judge Fitzgerald, having constructive dialogue with the Bahamas, and we hope to have good news on that front sometime later in November.

We're also building an approach to another issue that has worried us from the beginning of the case and we know is near and dear to many of our customers. How do we value digital assets for the purposes of plan?

In November, we'll be filing a motion to estimate digital asset values for purposes of plan treatment. The motion is being prepared, like everything we're doing, in consultation with the official committee and the ad hoc customer committees, so that issues and disputes are avoided wherever possible, before we get to court.

But that's an important milestone for us, as well, Your Honor, because, although many digital assets are relatively straightforward in value, other ones have circumstances that will raise disputes if we don't call those out and try to resolve those now. So, rather than wait and embed those issues in confirmation litigation next year, we're going to try to bring those forward and resolve those

by omnibus estimation sooner.

We also, Your Honor, have broken a logjam with our official committee on the monetization of our assets. The debtors generally have sought to monetize assets promptly. Sometimes our official committee has been more inclined to hold assets in the hopes of future appreciation. This is a legitimate business discussion. And I'm pleased to say we have consensus on what we will be selling immediately and what we are holding for a little while longer, given market dynamics.

Your Honor knows we have a merits settlement with Genesis and we have procedural settlements with Voyager and BlockFi. The S&C team, at least, is very happy to see these settlements because they avoid what are some of the most difficult issues we've faced in the case that relate to the venue questions when two debtors collide. But I think we have navigated all of that, so we know that, even though we have disputes with some of these other debtors that remain to be resolved, we have an understanding of where those disputes will be resolved and in what kind of a process.

Finally, Your Honor, we've done this work while assisting with regulatory and criminal investigations around the world, including the prosecution of Sam Bankman-Fried, whose trial continues in front of Judge Kaplan in New York. We've done so, cooperating with the government authorities,

not just because it's the right thing to do; we've done so because it's in the economic interest of our creditors.

Cooperation with the governments around the world has implications for our plan. Since customers and other creditors, as well as the corporate entities, were, in our view, defrauded, the plan subordinates government fines and penalties around the world to creditor recoveries. We are asking government creditors to join this class voluntarily.

And as an example, the CFTC in the U.S. has already acknowledged this in their 8.7-billion-dollar proof of claim, which, as submitted, acknowledges the subordinated status of our class of government restitution and fines.

So, Your Honor, we're going to continue at pace. We intend to make progress prior to effectiveness and not to wait for effectiveness on many of the things cases do after effectiveness.

We will continue to resolve material claims, so you'll see claim objections from us over the next months, especially on our larger claims.

We will continue to sell material assets, and you'll see asset disposition motions.

And we will continue to pursue material outbound litigation. This is not a case where we're going to wait for the formation of a litigation trust someway -- someday and see how it does, but the material pieces of litigation we

intend to commence during this case.

Our goal is not merely to confirm a plan and then go home. Our goal is to make distributions to customers as promptly as we can. And to do that, we know it takes a lot of work now, so that, as we walk into confirmation and effectiveness, we don't have the large reserves for disputed items that have delayed distributions in other large cases, sometimes for many, many years.

So that's our status and a little bit of our philosophy on how to conduct this. And I'm happy to take any questions, Your Honor.

THE COURT: Okay. No, I don't have any questions at this time. Thank you.

MR. DIETDERICH: Thank you.

THE COURT: Anyone else wish to be heard on this issue?

MR. PASQUALE: Ken Pasquale from Paul Hastings for the official committee.

Let me start, Your Honor. I very much appreciate Mr. Dietderich's acknowledgment of the committee's hard work in getting us with the debtors, with the ad hoc group, and the other stakeholders to where we are today.

As Mr. Dietderich said, our members have been very actively involved. As you know, they are residents all over the globe, came to New York for a series of meetings. And

those meetings and the negotiations that Your Honor knows we were pushing to have as soon as possible resulted in the plan support agreement and the structure that Mr. Dietderich outlined.

There is a lot of work to do. We're looking forward to doing it with the other stakeholders, as we proceed.

And I think I just -- the only other thing I'd like to say is picking up on Mr. Dietderich's last comment. The milestones are what they are. We would like to see and we will be doing our best, as I know the debtors will and the other stakeholders, to move as fast as we can and do better than those milestones because the goal here is to get recoveries to the creditors, to the customers at the earliest possible date, and obviously maximize those recoveries.

Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. HARVEY: Good morning, Your Honor. And may it please the Court, Matthew Harvey from Morris, Nichols, Arsht & Tunnell on behalf of the Ad Hoc Committee of Non-U.S. FTX.com Customers.

Again, Your Honor, I want to echo Mr. Pasquale's comments and Mr. Dietderich's comments and thank them for acknowledging the hard work that the ad hoc committee put into this.

Your Honor, it really took months of hard-fought negotiations, but we were pleased that the settlement that was ultimately reached of the customer property issues gave appropriate account to the customer property arguments that we have been advancing since the beginning of the case and also resulted in what we believe is a favorable framework for preference settlements.

And Mr. Dietderich mentioned -- excuse me -- while customers are not required to take that settlement, we do think it's a favorable framework for customers to settle into, should they so desire. And again, Your Honor, we're pleased with the outcome here.

And it's not stated directly in the document filed with the Court, but in the accompanying press release from the debtors, the debtors noted correctly that they expect that this will result in approximately 90 percent of distributable value in the estates globally going to customers. So, again, the ad hoc committee was pleased with the cooperation of the parties and the outcome here.

Thank you, Your Honor.

THE COURT: Thank you.

Anyone else?

(No verbal response)

THE COURT: No. Okay.

MR. DIETDERICH: Your Honor, Andy Dietderich.

Just one point and it's not at all a contradiction. Thank you and thank you.

I just wanted to say one more time because there's a been a little bit of confusion among some of the press on the 90 percent number and I want to underscore what that is and what that is not. All right?

We do not know what the level of customer recoveries in the case is going to be. We're hoping it's a nice recovery, but we don't know.

In the press release, there are some factors that we listed for people to consider about what will drive actual recoveries, including the size of the claims pool in this case, which is -- which, you know, is also a -- kind of an open question.

The 90 percent number is a number that we use simply to demonstrate the following, which is:

Based upon our current assumptions about assets and liabilities and the size of the claims pool, we estimate that 90 percent of global value, whatever global value there is, will ultimately go to customers in the case. It could be a 20 percent case or a twenty-cent case or a forty-cent case or an eighty-cent case or a hundred-cent case, right? We do not know the answer to that yet. What we are projecting at this time is a -- the substantial majority, the lion's share of value that we have to distribute is going to go to customers

internationally or customers in the United States. I just wanted to clarify that.

THE COURT: Okay.

MR. DIETDERICH: Thank you.

THE COURT: I understood that, also.

MR. DIETDERICH: Thank you.

THE COURT: So I think, for the press, the idea is the 90 percent is what's expected to be distributed based on whatever the recovery ultimately turns out to be. We don't know what that recovery is at this point. Okay. All right.

MR. GLUECKSTEIN: Good morning, Your Honor. For the record, Brian Glueckstein, Sullivan & Cromwell, for the debtors.

The first item going forward on this morning's agenda is Item 11, which is the second joint motion of the debtors and the committee seeking an order pursuant to Section 107(b) of the Bankruptcy Code to extend for another 90 days the period by which all customers' names and addresses are redacted from the public record.

Your Honor, in support of that motion, we have in the courtroom this morning Mr. Kevin Cofsky of Perella Weinberg Partners, who is -- we'd like to call as a witness to make the evidentiary record we need in support of this motion.

THE COURT: Okay. Come forward. Please take the

stand and remain standing for the oath.

THE ECRO: Please raise your right hand. Please state your full name and spell your last name for the court record, please.

THE WITNESS: Kevin Michael Cofsky, C-o-f-s-k-y.

KEVIN M. COFSKY, WITNESS FOR THE DEBTORS, AFFIRMED

THE ECRO: You may be seated.

Your Honor.

THE COURT: Whenever you're ready, Mr. Glueckstein.

MR. GLUECKSTEIN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GLUECKSTEIN:

Q Good morning, Mr. Cofsky.

A Good morning.

Q Mr. Cofsky, you have testified for the Court twice previously in support of the debtors' motions to redact customer names and address, correct?

A Yes, that's correct.

Q Can you briefly remind the Court of your background and qualifications, please?

A Yes. I graduated from the Wharton School of Business with a major in economics and a concentration in finance.

I started my career as an analyst in financial restructuring at Houlihan Lokey.

I attended the University of Pennsylvania Law School and

the Fels Center of Government.

And then I was an attorney, clerking with Chief Justice Poritz in the New Jersey Supreme Court and I practiced law at Cravath, Swaine & Moore.

And then I joined Evercore Partners, ultimately as a managing director.

And I left Evercore to join a predecessor firm to Perella Weinberg Partners in 2006, and I've been with Perella since that time, focusing most of my career in restructuring and liability management.

Q Mr. Cofsky, can you please remind the Court as to the scope of work to which you and your colleagues at Perella Weinberg Partners have been retained to assist the debtors with in these cases?

A Yes. We've been retained as the investment banker for the debtors. And to that end, we have been asked to monetize a number of assets to evaluate various ways in which to maximize the value of the debtors' assets.

Q And does that work include any work with respect to monetization of the debtors' legacy exchanges?

A Yes. We've spent considerable time evaluating the potential to either reorganize the legacy exchange assets or to partner with others or to sell those assets.

Q And you're personally involved in that work?

A Yes, I am.

Q Mr. Cofsky, have you become aware of information, since your prior testimony in June of 2023, that changes any of your prior opinions as to the need to keep the debtors' customer information confidential?

A No. In fact, my experience since my last testimony only serves to enhance my view that the value of those customer identities to the estate is -- is high and very important.

Q Mr. Cofsky, are the customer lists -- the names, addresses, information of the customers -- a source of value, in your opinion, to the debtors, if they were to sell the exchange assets?

A Yes.

Q How about if the debtor were to reorganize the FTX exchanges in some way, would they be a source of value to the debtors?

A Yes, they would.

Q And how about the -- do you have an opinion as to whether the debtors' customer information -- names and addresses -- have value to the debtors on a standalone basis if they were to be monetized simply as information?

A Yes.

Q And can you elaborate just a little bit as to your views as to the potential sources of that value?

A Sure. As I testified previously, I -- actually, I don't recall if it was in my declaration or in my prior testimony.

But we have been engaging in an outreach process with a number of interested parties to either acquire the legacy exchange assets and/or to partner with the debtors in connection with a relaunch of the exchange. We've been evaluating that process relative to the potential to reorganize the assets on a standalone basis.

As I testified previously, that process has been quite robust. And we -- on the basis of my discussions with those counterparties, it has become very clear that they place significant value on the identities of those customers and the potential to have those customers continue to utilize the new platform, whether that's a reorganized platform, a partnered platform, or a sale to this potential investor. And the exclusive access to those customer lists is very important and has been a critical element of our conversations.

Q And where are you in that process today? Take us from June through today, as far as how far -- what you've been doing in terms of the process to monetize these assets.

A Sure. We initially had a very broad outreach, a number of inbounds, over 70 parties that were contacted or contacted us. We have narrowed that significantly, based on our valuation of the indications of interest.

We are now engaging in robust discussions with a handful of parties. We are engaging in -- they are engaging in

diligence, we are engaging in diligence, and we are having very detailed conversations on a regular basis regarding the terms and the structure of a potential transaction.

Q Mr. Cofsky, do you have a view as to timing for the debtors to potentially conclude the process and enter into a transaction?

A I don't have a specific date. These are very complicated transactions, given the regulatory framework and the complicated nature of these cases.

I am optimistic that we will be in a position to have either a stalking horse bid or we'll have made a determination with respect to a reorganized exchange on or prior to the date that Mr. Dietderich referred to earlier, which is the December 16th milestone.

Q Mr. Cofsky, do you have a view, as the debtors' investment banker, today, whether the immediate disclosure of customer names and information -- names, addresses, and other identifiable information would jeopardize the ability to maximize that value?

A I -- I do. As I stated earlier, the exclusive access to the identities of those customers and the potential to bring those customers onto a reconstituted or new exchange is a critical element of the discussions that we're having with these counterparties. So I think it's clear to me that disclosure of those customer lists and those names would

significantly impact our ability to consummate a sale and maximize value.

Q Thank you.

MR. GLUECKSTEIN: No further questions, Your Honor.

THE COURT: Thank you.

Any cross?

MS. TOWNSEND: Good morning, Your Honor. Good morning, Mr. Cofsky.

THE WITNESS: Good morning.

MS. TOWNSEND: Katie Townsend on behalf of the Intervenors, The New York Times, Bloomberg, The Wall Street, and The Financial Times.

CROSS-EXAMINATION

BY MS. TOWNSEND:

Q Mr. Cofsky, you recall we met each other back in June. I believe your testimony was that, since that time in June, your view of the potential value of the names of debtors' creditors/customers has not changed in any way; is that accurate?

A I'm not sure that characterizes what I said.

Q Okay. Well, then let me ask it this way.

A Sure.

Q Since June, has your view of the potential value of the names of debtors' customer creditors to the estate changed in any way?

A It has. My view -- you know, I want to make sure I'm clear -- when I was answering Mr. Glueckstein's question, my view that the customers, the identities and the customer lists have value hasn't changed, my view of the quantum of value has changed. As I've engaged in discussions with these counterparties, the value is even greater than I had previously expected.

Q How many counterparties have you been in discussions with that have changed your view as to the quantum of value?

A I don't want to give a specific number because we have -- as I indicated, we've narrowed the field from a large number to a smaller number in what we're calling our second round; it's a handful of parties.

Q How many?

MR. GLUECKSTEIN: I object, Your Honor. We have an ongoing sale process, I think Mr. Cofsky's testimony is about his relative view that there is value, I'm not sure getting into specific numbers and information about bidders is appropriate or necessary.

MS. TOWNSEND: If I may, Your Honor, Mr. Cofsky is a fact witness. He's provided, effectively, at this point, hearsay testimony about discussions he's had with counterparties. He's not even going to tell us the number, I assume, although I'll ask him, he's not going to tell us the identities of those counterparties. I think that's relevant

to his -- certainly his testimony, but our ability to cross him.

THE COURT: I think he can answer the number, but not identify the individual parties.

THE WITNESS: There are three.

BY MS. TOWNSEND:

Q If I ask you -- and I don't want to confuse you, but in light of the Court's instruction that you not name those parties, could you, in your mind, assign each of them a letter, so A, B, C. Party number -- counterparty number one, let's call it Counterparty A; the second one, Counterparty B; the third one, Counterparty C. Can you do that and keep them kind of clear in your mind as A as one, B as one, and C as one? Does that make sense?

A I'll try to do that.

Q Okay. How many conversations have you had with representatives of Counterparty A where you've discussed the potential value of the names, only the names, of FTX customer creditors?

A I can't say specifically, but certainly over ten. Every conversa -- that we have with all these parties, we have been negotiating term sheets and engaging in significant diligence. And so the question of the value of their proposals is, obviously, relevant to all of our conversations and a significant element of their term sheet revolves around

the extent to which they will have access to those customers.

So certainly over ten for each of those parties in terms of conversations we've had regarding the value and the value of the customers.

Q During -- and let's take any of them, A, B, or C, any of those three third parties, in any of those conversations you've had, has there been a specific monetary amount attached to the names, names alone of FTX customers?

A There has been. I want to be clear, the bids are holistic, there's a specific quantum of consideration being provided. There isn't -- by the nature of these proposals, there are not -- value is not allocated into one group versus another group versus another group of the assets. However, it's clear from the structure of the proposals and the bids and our negotiations that a significant portion of the value is attributable to the identities of those customers.

And we're talking about -- to put this in context, we're talking about a digital asset exchange. And so the revenue that is generated from an exchange is a function of the customers on that exchange and the extent to which those customers transact. And so the customers, historically, of FTX demonstrated by their historical participation on the exchange that they transacted quite frequently, and so the counterparties are very interested in having that level of customer engagement and future transactions on a platform

where they can benefit economically from that.

Q So when you say holistic, the bids are holistic, you mean there for the exchanges as a whole, which would include the customer base; is that fair to say?

A Well, the proposals are -- each of the proposals is different in structure and type, but each of the proposals is for an entire transaction. So there isn't a proposal for one asset and another proposal for another asset and another proposal for another asset. So each -- while each proposal is different in character, each of them includes the purchase and exclusive use of the customers, the historical customers of FTX, and has been clear as we've engaged in dialogue over price and terms and structure that that element is a very significant element of what the counterparties are seeking to acquire.

Q When you say it's clear, how is it clear?

A It's clear based on my conversations and based on the term sheets.

Q What in any conversation that you've had with any of these counterparties makes clear that -- strike that.

So, just to be clear, none of the bids or term sheets that you've reviewed with respect to any of these counterparties includes as an independent -- or values as an independent asset the names of -- just the names of FTX customers; is that accurate?

A Actually, I don't think that is accurate. Again, these are complicated structures. We're talking about the names, identities, and the potential engagement of these customers on a future exchange, and so the extent to which those customers might engage on the future exchange is a critical element of the value that would be provided to the estate.

So the parties have made it clear that, to the extent that -- let me rephrase. A critical element of the proposals is ensuring that the identities of the customers does not become available to other parties. So, for example, the diligence process has been very complicated because none of the parties who we're engaging with want the other parties who are engaging with the debtors to see the identities of those customers. They've made it very clear that they are highly focused on ensuring that they have the exclusive access to the lists and the identities so that they can contact those parties and they can maximize the potential for those customers to transact on an exchange going forward.

And so it's created some interesting logistical obstacles for the debtor to overcome as we have been spending a lot of time with these parties. They've made it clear that they are highly focused on being able to utilize those customers going forward, but yet they obviously don't want other parties who they're competing with to see those names. So we're -- we've been managing through that.

So that -- to give you a sense of why I have confidence that the counterparties place significant value on the customers, they're telling me that they do.

Q And has any counterparty told you that they assign a specific monetary value, a specific monetary value to the names alone of those customers, or is it as -- I think I understand your testimony to say it's part of the whole package; is that fair to say?

A There's -- you've asked two questions. One, no; no party has told us that they are ascribing X value specifically to the name. Some of the proposals are -- have various components to them and portions of the consideration that would be provided to the estate are a function of the extent to which existing customers transact on the future exchange going forward. And so, by virtue of that construct, the conversation has been quite clear that the exclusive access to these customers is of critical importance.

So we have had specific conversations about that and about the extent to which the value that would be provided to the estate would be conditioned on the extent to which customers transact on a future exchange, or are accessible to others and, therefore, are not available to that counterparty.

Q Since June, have you done any work to determine how many of FTX's customer creditors are in fact exclusive or

exclusively traded on FTX exchanges?

A We actually are in the process of undertaking that in connection with the diligence process that I just alluded to. There's a complicated undertaking by a third party that will have access to the counterparties' lists on a confidential basis and the debtors' lists, and I don't believe they actually look at the list, but they're able to evaluate the extent to which the customers are unique to FTX or the counterparty, or there's overlap.

Q When will that process be completed?

A I actually don't know. I was just reviewing emails on this process this morning. So it's currently ongoing.

Q But as you sit here -- as you sit here today, you can't say whether or not, let's take Counterparty A as an example, there's a hundred percent overlap between FTX's current customer list or names of customers and Counterparty A's; is that accurate?

A I would be shocked if all of our customers were on another exchange, but I can't say for certain because I have not reviewed their lists.

Q And so when you say exclusive -- when you refer to exclusive access to the names of FTX customers that the counterparties are interested in, you mean exclusive in the sense that other counterparties don't have access to that during this bid process; is that accurate?

A Can you restate that? I want to make sure --
Q Sure.
A -- I answer the right question.
Q You testified that the counterparties you've been speaking to have an interest in exclusive access to the names of FTX's creditor customers. When you use the word exclusive in that context, you mean vis-a-vis other counterparties during the bid process, is that accurate, or do you mean something else by exclusive?
A No, no, that's not what I mean. It's not a question -- there are two elements to that. One, it's not versus only the counterparties to the bid process, it's to the rest of the world because, if other parties who would -- are competitors of FTX historically and/or sought to compete in this bid process, or for whatever reason didn't, had access to these customer lists, the bidders in our process would be -- a significant element of the value that they would be providing would no longer be relevant if they viewed their ability to access these customers somewhere else or if other parties already had access to the identities of those customers and could contact them and solicit them.

So it's not limited to these parties, it's just that these are the parties who are left in the process because they have provided the most compelling structure and terms to the debtors for the acquisition of these assets or to partner

with the debtors.

Q But you don't mean exclusivity in the sense that they're exclusive, necessarily, customers of FTX, you're talking about access to the list of names of FTX customers; is that fair to say?

A I want to make sure I'm answering clearly. The customers are free to transact on multiple exchanges, but the fact that they are customers historically of FTX and that they had been transacting on our exchange is unique to FTX. And so the counterparties would not have exclusive rights to contact these parties. Anyone is free to take out an ad in a newspaper and try to contact as many customers as they would like, but that's different than the fact that this customer list and these specific customers had transacted on FTX.

So I hope I'm answering your question.

Q Since June, have you or anyone at Perella Weinberg Partners taken any steps to determine how many FTX customer creditors would be interested in continuing to trade on the exchange following a sale or reorganization?

A I don't know how we would do that without contacting those customers. We have evaluated the historical trading volumes of those customers and we've provided that information on a no-names basis with the counterparties, which is why they're very interested in engaging in this transaction.

Q And whether or not those customers ultimately end up continuing to trade on an FTX platform if it's reorganized or sold remains to be seen because it's up to that customer, right?

A That's correct.

Q And whether or not that customer's name becomes public may have no impact at all on whether that customer decides to continue to trade on an FTX platform, whether it's sold or reorganized, correct?

A I think that's a correct statement, but I don't think that's the relevant question for whether the counterparties see value in being able to contact that customer specifically.

Q Because there's the possibility that that customer will continue to trade on the FTX platform if it's reorganized or sold, right?

A You lost me.

Q Isn't the reason the counterparties see value in the names of the customers because they anticipate that those customers will continue to trade on FTX's platform if it's sold or reorganized; is that accurate?

A I think that's accurate, yes.

Q Since June, has any third party offered to purchase a list of the names, just the names, of FTX's customer creditors on a stand-alone basis?

A We did have a -- at least one proposal for that type of structure, yes.

Q How much did that party offer for just the list of customer names -- no addresses, no anything else, just the customer names?

MR. GLUECKSTEIN: I object, Your Honor. Again, this is an ongoing sale process; the bidders are clearly listening to this hearing. The question here -- we'll get into this in argument -- is about is there value, it's not about the quantum of value.

THE COURT: Sustained.

BY MS. TOWNSEND:

Q Have you attached a monetary value to the names, the list of customer names of FTX?

A No.

MS. TOWNSEND: I think no further questions, Your Honor.

THE COURT: Thank you.

Anyone else wish to cross?

MS. SARKESSIAN: Thank you, Your Honor. For the record, Juliet Sarkessian on behalf of the U.S. Trustee.

CROSS-EXAMINATION

BY MS. SARKESSIAN:

Q Just a few questions, Mr. Cofsky.

So when do you anticipate the sale process that you're

currently conducting, when do you anticipate that that will be at completion?

A I don't have a definitive date for you, I wish I did. As I said, they're very complicated transactions and we're engaging in multiple conversations with parties every day on the terms and the structure. I am optimistic that we will have either a plan for a reorganized exchange or a partnership agreement or a stalking horse for a sale on or prior to the December 16th milestone date.

Q So I think you've talked about three possibilities. One is an outright sale of the customer names as -- either as stand-alone or perhaps as a wider deal, that's one; reorganizing the exchanges with a partner or the debtors; number three, the debtors just reorganizing the exchanges on their own. Is that relatively --

A I think that's fair, sure.

Q Okay. Are there any of those scenarios in which -- let me rephrase that. Let's take it one piece at a time.

The outright sale, let's say a sale takes place and as part of that sale the customer names are sold, would you anticipate that the buyer would ask as part of that transaction that the customer names remain sealed in the bankruptcy case?

A I would expect that they would, yes.

Q So let's take the second scenario where it's not a

sale, but the -- but there is a reorganization where the debtors pair with a partner to reorganize the platforms, in that situation, would you anticipate that the debtor and the partner would want the customer names to remain sealed in the bankruptcy case?

A I can't speak for them, but I would expect that they would, yes.

Q And then in a situation where there's no partner, it's just the debtor, they're reorganizing, they're going to do a second launch or whatever you wish to call it of a platform, would you anticipate the debtor would again want to continue to have the customer names sealed even after the effective date of the plan?

A I would think that the value of the customers to the exchange would remain valuable even after the conclusion of the case, yes.

Q Do you see any situation in which the debtors would not be seeking to permanently have the customer names redacted?

A I can only speak from my perspective as the banker trying to maximize the value of the debtors' assets, I can't speak to the legal issues, from my perspective, the value of the identities of the customers will remain and, regardless of whether there's a reorganized exchange or a sale or a partnership, the reorganized exchange, the new exchange in any shape or form, would value -- would place significant

value on maintaining the confidential nature of their customers.

MS. SARKESSIAN: No further questions.

THE COURT: Thank you.

Anyone else?

(No verbal response)

THE COURT: Redirect?

MR. GLUECKSTEIN: No redirect, Your Honor. No further questions.

THE COURT: Thank you.

Thank you, Mr. Cofsky. You may step down.

THE WITNESS: Thank you.

MR. GLUECKSTEIN: Your Honor, if it please the Court, I think we're prepared to proceed to argument.

THE COURT: Let me see if any of the other parties have witnesses. No witnesses?

(No verbal response)

THE COURT: Okay.

MR. GLUECKSTEIN: Thank you, Your Honor. Again, Brian Glueckstein, Sullivan & Cromwell, for the debtors.

By this motion, Your Honor, the debtors and the committee are jointly seeking to further extend the period by which customer names and addresses, including both individual and institutional customer names and addresses, should be redacted from public filings in these cases, unless

voluntarily disclosed by the customer, pursuant to Section 107(b)(1) of the Bankruptcy Code.

As the Court is aware, it is determined that -- Your Honor has determined at two prior hearings, based on uncontroverted evidence from Mr. Cofsky, the debtors' investment banker leading the effort to monetize the debtors' exchange assets, that the debtors' customer lists have value and are entitled to protection under Section 107(b)(1). We submit, Your Honor, that nothing has changed. In fact, Mr. Cofsky today again testified and reaffirmed his views that the customer lists have value. And he went further, explaining that the debtors are now in a position to, hopefully, actually realize that value, and detailed, in his view, that very significant elements of the bids that the debtors have in hand and have received rely on the fact that they get exclusive access to the customer lists, names and information, and that that is of critical importance to the bidders.

Mr. Cofsky testified the debtors are in a very advanced process whereby they're obtaining and evaluating these proposals, each one that includes the potential onboarding of the debtors' customers to another platform. There is unquestionably, based on Mr. Cofsky's testimony, value that would qualify these customer lists, names and addresses, as confidentially sensitive information, pursuant

to Section 107.

The value of these proposals can only be realized if the requested relief is granted and the debtors are permitted to maintain the confidentiality of the entirety of the debtors' customer lists.

As a practical matter, the names and addresses of the debtors' individual customers are already permanently sealed in accordance with the Court's order dated June 15th, 2023, pursuant to Section 107(c) of the Bankruptcy Code. That order is being appealed. The sealing of all names and addresses, including those of institutional customers, is necessary to facilitate the transactions currently under discussion. As Mr. Cofsky testified, the potential purchasers will not pay the same value for customers who could be acquired on their own because competitors or the potential bidders could access the FTX customer lists independent of this transaction process.

The conclusion of the testimony today, as before, is that a critical component of the strategy to monetize the debtors' assets is the continued confidentiality of the debtors' customer lists. This view is now bolstered by the testimony that the debtors have live proposals that they are pursuing to confirm this fact.

Your Honor in previous rulings has determined that the FTX debtors' customer lists are protected by Section

107(b) as confidential commercial information and as a trade secret. Nothing has changed about the nature or confidentiality of the debtors' customer lists since June when we were last here on this issue and we submit they remain so protected under the applicable legal standard.

The debtors are now finally in a position to realize real value from the customer lists and exchange assets in significant part because the customer names and addresses have been kept confidential to date, and the debtors should be permitted time to complete that process.

It is not clear at this point, as Mr. Cofsky testified, when and whether the disposition of the customer information will take place, before or in connection with the plan process. As Mr. Cofsky also testified, the debtors do expect to have concluded at least the current sale process prior to the filing of the amended plan and disclosure statement in December.

Guided by the Court's prior rulings, the movants have only requested at this time to formally extend the protection of redacting all customer names for an additional three months for entry of this order with all rights reserved. And Ms. Sarkessian, in her questioning this morning, raised the possibility, Mr. Cofsky acknowledged, that if we actually move forward with a transaction we are likely to need to seek further relief from the Court, but at

this time we do not know whether a transaction will be consummated or sought to be brought forward for approval. There are scenarios such as a liquidation, a full liquidation of the debtor, where there is no continuing exchange, where this issue might resolve itself, but where we stand today is in the middle of a sale process and what we are asking from the Court is the continued protection to allow the debtor to complete that process.

Neither the U.S. Trustee nor the media objectors have offered anything new in opposition to the relief requested under Section 107(b). In their papers, both simply incorporate prior recycled arguments, which have been disproved by Mr. Cofsky's testimony. The objectors continue to rely on the general principles of the right of public access to records and bankruptcy disclosure, but once again do not provide any evidence of specific harm that is being suffered that requires the disclosure of institutional names and addresses immediately, nor do they recognize the Court's role in modifying those requirements as appropriate for cause shown.

As the Court and the parties in interest have been able to observe, the debtors have been able to efficiently and completely administer these Chapter 11 cases while continuing to redact customer names and preserving the integrity of the customer lists. Notices have been sent,

pleadings served, and claims bar date procedures established, claims have been filed, the bar date has now passed, all within the parameters of the relief obtained in the Court's prior orders and subject to the type of relief that we're requesting be extended today.

As we addressed in our reply papers, any concerns that was raised in this round of briefing by the U.S. Trustee with respect to claims objection notices, we submit, are unfounded since the debtors have proposed to provide customized notices to any party who is the subject of a claims objection, either through an omnibus motion or otherwise. All creditors will continue to receive appropriate notices on all issues, including claims objection, like all matters we have noticed to date in these cases.

We submit, Your Honor, there's no basis for the Court to carve out selected portions of the debtors' customers from the redaction order, as suggested by certain of the argument and objections. As Mr. Cofsky's testimony again was clear, it is the totality of the customer lists, the names and the addresses, and the ability for a bidder and a purchaser who is offering to provide value to the estate, the value that they see is the ability to have exclusive access to the customer list to be able to solicit those customers without worrying whether competitors have access to

that list and are doing the exact same thing. That is a large portion, as Mr. Cofsky testified this morning, of the value that's created here.

Finally, Your Honor, I note that with the debtors' reply brief that we filed at Docket 3311 we filed a revised form of order with respect to this motion, which addressed comments received and the objections to the form of order that had been interposed by the United States Trustee. So we understand, at least as to the form of order, those objections are resolved.

We submit, Your Honor, that the objections to the continued redaction of the customer names and addresses pursuant to Section 107(b) should be overruled and the motion granted.

I'm happy to answer any questions from Your Honor.

THE COURT: No questions. Thank you, Mr. Glueckstein.

MR. GLUECKSTEIN: Thank you.

THE COURT: Ms. Townsend?

MS. TOWNSEND: Thank you.

THE COURT: Oh, I'm sorry. Support, yeah.

MR. PASQUALE: No, it's fine, Your Honor. Ken Pasquale from Paul Hastings for the committee, just one minute.

As a co-movant with the debtors on this motion, we

obviously support all the arguments Mr. Glueckstein just made, but I did want to just add, Your Honor, the committee from the very start of these cases has been advocating for the process that Mr. Cofsky described. Mr. Cofsky made quite clear the value inherent in the debtors' customer lists and we believe, as the committee, that there is a significant opportunity to maximize recoveries from the process that Mr. Cofsky described. The process should not be jeopardized at this time, Your Honor. We're at a critical juncture and disclosure of the lists, as you heard, would, in our view, jeopardize that process. So we would ask that the motion be granted.

Thank you.

THE COURT: Thank you.

Now Ms. Townsend.

MS. TOWNSEND: Thank you, Your Honor. I'll be brief.

We're here today on debtors' motion so that the Court can determine whether debtors have demonstrated that they're entitled to continue to redact the names of all of FTX's customers/creditors that are -- from all filings in this case for an additional 90 days, pursuant to Section 107(b). I know there has been some discussion about potential additional relief, but that's not an issue that's before the Court today.

Before I address that issue, I should, I think, note for the record, though it's already been alluded to, that my clients media intervenors have objected and continue to object to the Court's -- as this Court well knows, to the redaction of the names of FTX's customer creditors under both Section 107(b) and 107(c). We have appealed the Court's June 15th order authorizing redaction under those provisions on the showing that was made by the debtors and the Official Committee back in June that is currently pending before the District Court. So we understand well that this Court previously ruled under Section 107(b) that the customer creditor names at issue constitute a trade secret and can continue to be redacted while the debtors continue to seek how they're going to come out of these bankruptcies. We're not attempting to re-litigate that issue or that conclusion today, it's currently up on appeal, but we would be remiss if we did not object to debtors' request for further -- and the Official Committee's request for a further extension for another 90 days of the redaction deadline, really, as Mr. Glueckstein already referred to, for practical purposes for the customer creditors that are entities only.

So, without waiving any of our objections or arguments with respect to the Court's June 15th order, I will just limit my argument to that narrow issue, which is the only one currently before the Court today.

As the Court knows, debtors bear the burden of demonstrating with admissible evidence that the names of all of their customer creditors that are entities fall within the scope of Section 107(b), which is a narrow statutory exception to public disclosure in bankruptcy proceedings. The debtors have offered the testimony of their fact witness, Mr. Cofsky, again, as their sole evidentiary basis for seeking to extend the redaction period for an additional 90 days. As he did back in January and again in June, Mr. Cofsky has testified in effect that the debtors are still continuing to explore potential valuation of their assets and that the names of FTX customers, in his view, are a source of value or have value.

We've previously argued that -- I believe the term was quantum -- the quantum of value is relevant, but to the extent it isn't relevant, I think I would note a couple of things.

Mr. Cofsky testified today that the names -- I think it's fair to say the names of these entities are viewed by purchasers, or potential purchasers or counterparties, as having potential value because there is an existing customer base. So, if they're looking to purchase the company as a whole, they're looking to potentially utilize that customer base moving forward.

We don't know how many of these customers, and Mr.

Cofsky couldn't tell us how many of these -- it's nine million total customers, some smaller subset of that that are entities, how many of those are exclusive to FTX. That's an issue that came up back in June. We don't know if some of these customers are already parties of some of the -- or are already customers, rather, of some of the counterparties that Mr. Cofsky has engaged in discussions with. We also don't know what specific value is being attributed to the customer names alone, as opposed to some larger part of -- as opposed to the sort of exchanges as a whole. Mr. Cofsky testified that he hasn't taken any steps to determine or value the customer list standing alone since June.

So we don't -- the media intervenors would take the position, Your Honor, that the motion to extend the redaction deadline should be denied. To the extent the Court seeks to extend the redaction deadline, we would urge the Court to extend it, again, only for 90 days, that's the relief that's been requested. It appears, based on Mr. Cofsky's testimony, that there may be less basis for redaction of those names moving forward once -- possibly after December, once a plan on how the debtors will come out of these bankruptcies has been agreed to.

Thank you -- if there are no further questions --

THE COURT: No questions.

MS. TOWNSEND: -- thank you, Your Honor.

THE COURT: Good morning, Your Honor. For the record, again, Juliet Sarkessian on behalf of the U.S. Trustee.

Your Honor, I will be quite short. I'm certainly not going to repeat the arguments that we've made on this issue at previous hearings.

The U.S. Trustee is not taking the position that there is zero value for customer names, but that has to be balanced against the right of the public under both bankruptcy law and federal law generally to have -- for the public to have access to Bankruptcy Court filings. And here, you know, there is no customer list that's on file. There's no document called a customer list that's been filed in these cases. I think when the debtors and others refer to customer lists, what they mean is, well, we have the creditor matrix. Well, the creditor matrix also has creditors on it that are not customers and you can't tell in looking at it who's who necessarily, but I believe the view of the debtors would be, well, the over -- and I think they've said this -- well, the vast majority of our creditors are customers so, effectively, it's like a customer list. And then, similarly, for the schedules, the debtors' schedules, Schedule F includes customers, it also includes non-customers who are general unsecured creditors.

So that's what we're talking about and these are

documents that are effectively -- I mean, they're available to the public, but in highly redacted form.

And, you know, we're talking again about extending this another 90 days. And, obviously, the United States Trustee is not advocating for this to be a permanent sealing -- far from the case, we think it should not be sealed at all -- however, I think we shouldn't kid ourselves. This -- you know, based on Mr. Cofsky's testimony, he couldn't come up with a scenario where it would not be ultimately the debtors' request or the request of a purchaser to have the names permanently sealed. If these names are going to be sold, the purchaser is going to ask for permanent sealing. If the debtor reorganizes and they're going to go ahead with the platform, Mr. Cofsky testified -- you know, again, he says I'm not the debtor, but he would anticipate that that would be the request.

Mr. Glueckstein, I think the only scenario he came up with was, well, if there was a total liquidation -- there's no sale, there's no reorganization, we're just liquidating everything -- potentially, in that instance, they would not ask for a permanent sealing, but that's the only situation which, from everything I've heard, doesn't sound like what's going to happen in this case and of course nobody wants that to happen in this case.

So this is -- we're doing it in 90 days --

THE COURT: Well, I think you could also have a scenario where all this -- the sale falls through, none of these three counterparties decide to buy it, and the debtors decide not to restart the platform.

MS. SARKESSIAN: That would be a -- and I assume that would then --

THE COURT: But that's not --

MS. SARKESSIAN: -- be a liquidation.

THE COURT: -- that's not necessarily a liquidation. They could reorganize without restarting the platform.

MS. SARKESSIAN: Okay, I see the point, Your Honor. Yes, if they were not going to restart the platform, I'm not sure what the debtors' business would be otherwise, but sure. I guess there are some scenarios that, based on what debtors' counsel has said they believe is going to happen, it sounds likely that the scenarios will be one in which somebody will be asking for this to be a permanent sealing, but -- and I understand that that's not the issue before Your Honor and Your Honor is not being asked to permanently seal this, but our concern is, again, we are coming up on the one-year anniversary. So this information has been sealed for a year or -- well, with respect to the schedules, from the time they were filed in March. So, you know, I guess there's some slim possibility at some point

that the redactions will no longer be requested, but the U.S. Trustee's concern is it's been a very long time since they've been sealed and it looks likely that this is going to continue and potentially be permanent. So --

THE COURT: But if a customer list has value, and the debtors are trying to sell it and they do sell it, it still has value to the purchaser. So of course they're going to ask for a permanent sealing of the customers because they don't want to just buy it and then say, okay, here's everybody who's on the customer list. That doesn't do any good for the purchaser.

MS. SARKESSIAN: Right. That's my understanding. I was just trying to make the point, in cross-examining the witness, that while this is being done in 90-day increments there's a good likelihood that this is ultimately -- that someone is ultimately going to ask that it be a permanent sealing.

THE COURT: And that may or may not be appropriate when that comes up.

MS. SARKESSIAN: Thank you, Your Honor.

The only other thing I have to say is with respect to the form of order that Mr. Glueckstein is correct that the changes that they made do resolve the U.S. Trustees issues with the form of order.

THE COURT: Okay. Thank you.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: Mr. Glueckstein.

MR. GLUECKSTEIN: Just very briefly, Your Honor. Again, Brian Glueckstein for the debtors.

Counsel for the media objectors went through a few points about we don't know if these customers are exclusive to FTX or we don't know if they're going to stay with the exchange. Of course, from the estate's perspective, and Mr. Cofsky was clear on this, what matters to us is whether a buyer is willing to ascribe value to the opportunity to have exclusive access to that list such that they pay us for it.

If they are, from the estate's perspective, we realize the value of that asset. Whether those customers ultimately do or don't stay on the reorganized exchange or on the acquirer's exchange that is all presumed to being priced; the risk of that is being priced into the purchase price that Mr. Cofsky is negotiating with the potential bidders.

So, from the estate's perspective we submit, Your Honor, the question for the Court is whether this is confidentially sensitive information that there is value to the estate, and the uncontroverted testimony is that there is. Mr. Cofsky was also clear that there is certainly more value with these lists -- you know, these customer names and addresses being available to the buyers then without - in fact, I think his testimony was that it was a very

significant element of the consideration of the bids that we received.

With respect to the potential permanent sealing, of course, we have taken this in incremental steps with guidance from Your Honor when we started this in the spring to be sure that we were proceeding methodically. We have been trying to balance the need for public disclosure with the need to maximize the value of assets for our estate. As Ms. Sarkessian acknowledges, we have filed non-customer information publicly on the docket. We have -- there has been a lot of effort to reconcile those efforts, again, with guidance from the Court. And the debtor will continue to do that.

If there is a transaction, yes, we are likely to be before Your Honor needing further relief on this. As I acknowledged, nobody is hiding from that fact. But we have not come forward to ask for permanent sealing and, of course, that is a different question. As Your Honor says it may or may not be appropriate when that is before you.

The question today is, is there sufficient value, is this qualified for protection continued protection. The Court has twice found that this information qualifies for protection. Have we carried our burden that we should be able to benefit from continued protection to allow the debtor to complete the ongoing sale process and to see if there is a

transaction where value can be realized from this customer information in a way that we believe delivers additional value to our creditors, maximizing the value of the estate which, of course, we are trying to do.

So, we would ask, Your Honor, that the motion be granted and that the remaining objections be overruled. Thank you.

THE COURT: Thank you. Well, I do recall at the beginning, when this first came up, I suggested the 90 days because we didn't know whether it had value or not at that time. But, once again, the uncontroverted evidence presented today is that it does have some value. The evidence today was even stronger then it's been in the past two hearings. I now know that there are, at least, three parties who are interested in purchasing the asset, platform. Just as a matter of common sense, a platform without customers is nothing. So, it has to have value. The customer list has to have value.

These customers have said we think there is value to it. We want to make sure that this remains sealed so that when we buy it we have something to work with and that is uncontroverted. The objecting parties have still not brought forward any witness who can dispute what Mr. Cofsky has testified too.

So, I continue to find that 107(b) is appropriate.

That the customer list constitutes confidential commercial information and trade secret; that it has value; that the debtors have a right to try to sell it or to reorganize a round of the platform, and continue to operate that platform; it needs to have value if it does; and if the customer list is disclosed it would lose a lot of value, obviously.

On the issue of the quantum of the value that doesn't matter. Nothing in 107(b) says it has to have a certain level of value before you decide whether or not it should be protected. It just says if it's commercial confidential information or a trade secret; and it is. It has value. It doesn't matter at this point what that value is because it has value.

So, for those reasons I will overrule the objections. I will approve the order for an additional 90 days. With that said, is there some way to avoid another one of these hearings in 90 days where we don't have to go through and hear the same testimony again.

Ms. Townsend, you did appeal the 107(b) issue, correct?

MS. TOWNSEND: Yes, Your Honor.

THE COURT: Ms. Sarkessian, have you also appealed that issue?

MS. SARKESSIAN: Your Honor, our office did file a notice of appeal, but we withdrew it.

THE COURT: Okay. Well, that complicates it. I was hoping that it was on appeal and you could just reserve your rights in the future if and unless some additional information comes open or you find a witness who can come in and testify to the contrary. Let's see if you can -- I will let the parties talk it out and see if there is some way to resolve that issue.

Mr. Glueckstein.

MR. GLUECKSTEIN: Yes, Your Honor. We certainly agree. We tried to do that in advance of this hearing. The parties wanted the ability to cross -- the objectors wanted the ability to cross-examine Mr. Cofsky, but we certainly agree that we would welcome, you know, the opportunity to try to have parties reserve rights, but without needing to continue to have evidentiary hearings in front of Your Honor. We will talk further with the objectors.

THE COURT: Okay. Thank you.

Want to move to the next issue?

MR. GLUECKSTEIN: Yeah, I think for the last matter going forward today, the next item on the agenda, I will turn it over to Ms. Brown.

MS. BROWN: Good morning, Your Honor, may I please the Court, Kim Brown.

THE COURT: Still morning.

MS. BROWN: It is still morning. I had to

doublecheck that with you there. So, may I please the Court, Kim Brown from Landis Rath & Cobb appearing today on behalf of the debtors.

Your Honor, this brings us to Item No. 12 on the agenda which is the debtors' motion requesting relief from certain of the default provisions contained in Bankruptcy Rule 3007 and Local Rule 3001 to enable the debtors to implement an efficient and expeditious claim objection process in these unquestionably large, unique, and complex Chapter 11 cases.

As Mr. Dietderich explained during his case update, it is a primary goal that is shared, as you heard, from both the committee and the ad hoc committee to return value to creditors as soon as possible in these cases. To that end, the debtors filed this motion seeking relief from certain of the default provisions to enable them to create a workable solution that provides for an expeditious review and the process to object to claims.

Given the sheer volume of claims that likely will need to be reconciled and potentially objected to in these cases, the debtors submit that there is cause and it is in the interest of justice to provide relief that would authorize the debtors to (I) file more then three omnibus claim objections a month; (II) exceed the 100 claim limit per omnibus objection; and (III) forego having to identify every

conceivable basis to object to a claim on substantive grounds particularly when the debtors believe that many can be disallowed on certain threshold substantive issues.

The U.S. Trustee has argued that this Court lacks authority to modify the default rules governing omnibus claim objections; however, both the applicable bankruptcy rules and the local rules provide this Court with clear discretion to approve the debtors' request. Specifically, Bankruptcy Rule 3007(c) states, and I will quote:

"Unless otherwise ordered by the Court or permitted by Subdivision (d), objections to more then one claim shall not be joined in a single objection".

Subdivision (d) provides that an omnibus claim objection may include 100 claims. The "Unless otherwise ordered by the Court" proviso clarifies that this Court may modify Bankruptcy Rule 3007, including Subpart (d) that sets a 100-claim limit to objections.

Even if for some reason the Court were inclined to go with the U.S. Trustee's position that Bankruptcy Rule 3007 does not provide such discretion, Local Rule 3007-1 expressly states that to the extent that there is any inconsistency with Bankruptcy Rule 3007 on the one hand and Local Rule 3007-1 on the other hand, the local rules govern omnibus claim objections.

Local Rule 3001-(f)(2) expressly authorizes this

Court to provide relief from the default limit on the number of claims that can be included in an omnibus substantive claim objection for cause. Over arching all of these rules, as acknowledged by the Office of the United States Trustee in its objection, is Local Rule 1001(c) which provides that the Court has discretion to modify the local rules in the interest of justice. As such, the debtors submit that this Court has ample authority to provide the relief requested by the debtors.

Here, ample cause exists for the Court to exercise its discretion to allow the debtors to implement a workable claims objection process that will further the interest of justice. Absent the relief requested, it could take years if not decades to file, let alone diligence and prosecute, claims to conclusion if they have to do separate claims objections to the tens of thousands of claims that are likely to be in dispute in these cases.

If parties who are filing claim objections are required to identify every conceivable substantive ground for objection to claims it would take -- it would balloon the time that it would take to diligence and ultimately file those claims objections which in turn would create an astronomical additional cost on top of the cost just to reconcile the claims in the first instance. This would be obvious to the detriment of the creditors and the holders of

allowed claims who share, I'm sure, in the debtors, the committees, and the ad hoc committee's goal of getting value returned as soon as possible to these creditors. This kind of delay is too expensive, it's too untenable and it's obviously detrimental to the debtors' estates and the goals to achieve their paths forward.

By contrast, granting the relief requested will further the interest of justice by providing for the expeditious and efficient prosecution of claims and in turn help achieve the goals shared by all parties in interest to provide an expeditious distribution to holders of allowed claims for their recoveries.

Now the U.S. Trustee has also raised additional concerns that granting the relief requested will somehow sow confusion among creditors or shift the evidentiary burden, but those concerns are misguided. First, as Mr. Glueckstein explained in connection with the creditor sealing motion it is the debtors' intent, as it happens in many large Chapter 11 cases, that when an omnibus claim objection is filed the debtors will file a full copy of the objection on the docket and they will serve each impacted creditor with an exhibit that is customized that will identify just the claims that relate to that creditor that are subject to that claim objection.

So, there will be no confusion, the creditors will

not have to sift through multiple exhibits to determine if a single objection applies to them; it will be clear from the start. Additionally, there is nothing in the procedures or the relief that we requested that by any means shifts the burden from any of the parties. The debtors agree, a properly filed and timely filed proof of claim is prima facie evidence that the claim is valid. It is the burden that shifts to the objecting party to provide affirmative evidence that the claims should be disallowed for the basis identified in the objection.

As I just explained, the creditor is going to be served with this objection. It is going to include an exhibit that is customized to them and will explicitly outline what the basis of the objection is.

THE COURT: Explain how that is going to work, the customization.

MS. BROWN: Sure. So, think about it as to how we did it with respect to the claims procedures. So, A&M and Kroll worked together so that when proofs of claims were sent out to the creditors they were individualized where it identified, you know, what the creditors claim was, what was a scheduled claim amount.

So, in this situation it would be no different. It would be A&M and Kroll working together. They are going to take, you know, the master exhibit list that would be in the

form that is prescribed by Local Rule 3007-1. It outlines exactly what the exhibits must look like. We have not sought any relief with respect to deviating from the requirements in the rules as to what the exhibits must be. And then they will, effectively, create custom exhibits that will remove all of the other claimants except for those who are being served with the objection and are impacted by that specific claim objection.

THE COURT: So, is the customer or the claimant going to get a 1,000 page spreadsheet with everything redacted out except their name?

MS. BROWN: No.

THE COURT: Okay.

MS. BROWN: That is certainly not what we were intending to do, right. The goal here for the debtors and as -- you know, we worked hand and hand with the committees to come up with a process that we thought would be efficient, expeditious, and as easy as possible on the creditors. So, they will only have, you know, one, two, three roles depending upon how many claims are subject to their objection and that is all that they will see on the exhibit.

THE COURT: Okay.

MS. BROWN: Now should they be inclined to want to see all of the claims that were also subject to that objection they will have the ability to access that on the

bankruptcy docket and granted to, you know, customer information consistent with Your Honor's ruling today that will be redacted. They would still see, you know, there were X number of claims that were objected to on a late filed basis similar to, you know, whatever their claim is. I am just using late filed as an example.

THE COURT: Okay. So, what happens if you file an objection with a threshold issue and your objection gets overruled, what happens next?

MS. BROWN: So, assuming that this is a -- well, there will need to be further diligence on both of the -- well on the part of the debtors and their professionals. To the extent the committee is weighing in on certain claims, you know, there will be a dialog there. After further diligence there would be a later filed objection that, again, would be customized so the creditor can see, okay, this claim objection applies to me, here is the basis for the objection, and then we would try to, obviously, work with the parties.

It goes for the initial objections that are filed too. You know, the debtors are always trying to work with the parties to try to resolve any issues on a consensual basis to the extent that it can.

THE COURT: What are we going to do with -- I want to make sure that pro se customers know that if they get a claim objection, and many of these people are overseas, that

they have the right to appear via Zoom, they don't have to be here in-person, will that be in the notice as well?

MS. BROWN: We can certainly add that into the notice, Your Honor.

THE COURT: Certainly, if you have a claimant whose got a billion dollars of bitcoin on the platform, and he hires an attorney, that is a different story. But, you know, people who are overseas and have a few hundred dollars, or a few thousand dollars, or even, you know, even a couple hundred thousand dollars that they have invested on the platform and they are going to appear pro se I want them to know clearly that they do not have to appear in Court to object or respond to the objection.

MS. BROWN: Certainly. That is consistent with what we generally have done with respect to the various notices that we have sent. So, with respect to the bar date notice, you know, this is a unique case. The bar date notice, unlike any other bar date notice we have ever done, included at the very top before you even got to the case caption that you should read this, this may impact your rights.

I would think and propose that where we have that in the notice for the claim objection that we would also provide clear guidance that, you know, its unnecessary for you to appear if you are a pro se claimant in-person, in

court, and it can be handled by a virtual hearing.

THE COURT: Okay.

MS. BROWN: Then, Your Honor, with respect to -- sorry, I lost my train of thought for a moment. Just give me one moment. So, that brings me to, you know, what the U.S. Trustee seems to be proceeding with here is really a policy position that their pressing regardless of the unique circumstances of these cases and the need for a workable solution to the claims procedures.

What we have tried to achieve here, and balanced, and worked hard with both the committee and the ad hoc committee is for this to be something that is efficient, expeditious and it meets everyone's goals of returning value to creditors.

The last point that I will make, which probably is the most important, there has not been a single party with an economic interest or who would be subject to the procedures and the relief that we have requested that has objected or, otherwise, responded to the motion. The only person who has raised a concern is the Office of the United States Trustee. Both the committee and the ad hoc committee support the relief that we have requested.

So, unless Your Honor has any other questions, I will cede the podium to those who may also like to speak.

THE COURT: Thank you. No questions.

MS. BROWN: You're welcome.

MR. POPPITI: Good morning, Your Honor. For the record Robert Poppiti from Young Conaway Stargatt & Taylor.

As Ms. Brown said, the official committee of unsecured creditors does support the relief requested. We do appreciate the United States Trustees concerns, Your Honor. We did have a conversation with them a number of weeks ago when the motion was filed about what the committee's position as on the relief requested. Much of that conversation focused on noticing issues, making sure creditors were getting appropriate notice.

Our conversations with the debtor were very much consistent with the colloquy you just had with Ms. Brown in terms of how the notices are going to work which, in my experience, is exactly how they would work in a case of this size where you are going to have a customized notice so creditors don't have to scroll through dozens of pages, if not hundreds of pages, to find their particular claim. So, we are very comfortable with all of that.

We are also very comfortable with, I think, the point that Your Honor and Ms. Brown just demonstrated that if there are things that need to be in the notice about Zoom hearings and other things, we are comfortable that it can be done that way. Again, we appreciate where the United States Trustee is coming from, but ultimately this is a large case.

There is thousands of claims and ultimately parties do have to read the notices.

The key, from our experience, is being very clear in those notices about what the expectations are: what are the response deadlines, how is the hearing going to go, making sure that notice is setup in a way that parties can very easily find their claims and not have to sift through dozens of pages. So, we are very comfortable with that and we think that is key here.

We also think we have to be flexible as the debtors have said. This is a very large case. There are any number of claims. While our local rules do modify the bankruptcy rules, which by the way we do think is appropriate. I was very clear that the local rules have made modifications to the bankruptcy rules. I would like to think that the reason the local rules are drafted the way they are is through years of experience of practitioners in this district trying to make sure that the claims process works the way it should: efficient, making sure that creditors are getting appropriate notice.

At the same time, it is very clear that those local rules can be modified in the interest of justice. And as Your Honor and, I think, most folks in the courtroom know often times in these larger cases they are modified to allow for more objections per month, more claims per objection, and

such. So, we think we have to be flexible here.

Again, why we appreciate the United States Trustees concerns, we are just not prepared to go to a place right now where the parade of horribles that they have identified in their papers is going to play out. We, obviously, have the opportunity to seek to modify those rules as do the debtors if ultimately, we find out that their not working for this case and, of course, Your Honor has the opportunity and every ability to police his docket to the extent that it becomes unwieldly or there is any abuse of the so-called one bite at the apple rule if that is lifted in this particular case.

So, as Ms. Brown said, the committee does support the relief requested, Your Honor. And if you have any questions, please let me know.

THE COURT: Okay. No questions. Thank you.

MR. POPPITI: Thank you.

MR. HARVEY: Good morning, Your Honor. For the record Matthew Harvey from Morris Nichols Arsht & Tunnell on behalf of the ad hoc committee.

I would echo the comments of the official committee. We support the relief. As previewed in the comments about the plan support agreement up front and the progress that was made, an issue in this case is going to be claims administration and the efficient administration of claims. A focus of our committee, since day one, has been

returning property to customers for its value as soon as possible and as the debtors eluded to in their presentation chopping as much wood on claims administration in advance of the effective date will enable that.

So, we are supportive of the process. Its efficient particularly with the guardrails the debtors put up here and the additional guardrail that Your Honor helpfully suggested making it know to creditors their rights and their ability to appear and advocate for their rights without having to appear in Delaware in-person. So, the ad hoc committee is supportive.

THE COURT: Thank you.

MR. HARVEY: Thank you, Your Honor.

THE COURT: Anyone else? Ms. Sarkessian.

MR. LIPSHIE: Good morning, Your Honor. Jonathan Lipshie on behalf of the U.S. Trustee.

The U.S. Trustee opposes the motion. I heard a lot about guardrails here. The motion, as articulated, has no cap whatsoever on the number of creditors. The local rules and the bankruptcy rules have it at 100. I don't think there is any inconsistency between the two, you know, despite what Ms. Brown said. The local rules track the bankruptcy rules. That is number one.

The stress here is -- and they have unfettered rights to go after non-substantive claims. This is only as

to the substantive claims. Our opposition is two-prong.

First of all, there's the issue on unlimited monthly (indiscernible) claims. There is no limit whatsoever. They can file 10, 100, 1,000 a month. And there is no limit as to the number of creditors. They could be 100, 1,000, 10,000. That -- notwithstanding what Ms. Brown said, and the Court's questions concerning how the notice is going to be sent out, that is -- without a cap that is an unwieldy docket situation for the Court and for all the parties in interest.

Notwithstanding that, the real problem that the U.S. Trustee has with the motion is on the substantive issues. And as we articulated in our opposition, the way the motion is couched and the relief sought is they have multiple bites at the apple. They could take a first bite, lose, come back another time, come back a third time, come back a fourth time, ad infinitum, the way the relief, as articulated, is right now.

That, in the context of this case, where creditors, customers have been, by everybody's account, victimized by the prepetition actions, the egregious fraud involved in this case, to submit them, and -- as Your Honor pointed out we've got pro se, worldwide customers, and creditors who would have to come in multiple times, lawyer up multiple times to fight different objections on different grounds.

That cuts against transparency, due process, and the way the delicate balance of claims objection litigation is articulated in the code and in the rules where you are the creditor, you file your proof of claim, its prima facie evidence as to amount, validity, and it becomes the objector, in this case the debtors' burden to come forth with some kind of evidence. That means all the evidence, all of the substantive grounds. Under what the debtors propose they don't have to do that. They can keep coming back.

The argument that everybody wants this case to move fast is actually contrary to what the debtor is asking for because they can keep coming back. The issue of finality is not served by having these multiple bites. Figure out what the claim objection is, all the substantive grounds, give it to the debtor -- I mean, give it to the claimant and let the litigation process commence. I mean once that happens it's a contested matter.

You have all discovery is fair game under 9014. You get to take depositions, you get to ask for documents, you get to make requests for admissions and then you litigate the case. The way its set up right now -- and, yes, it's a big complicated case, but the point is get to the finality early. Don't let it drag on, and on, and on.

So, I think based on the facts and circumstances of this case, what happened prepetition, what the creditors and

customers have been through, the bottom line is make the debtors follow the rules as written, they're setup for a reason, and get the case moving as fast as possible and final as fast as possible.

THE COURT: We have nine and a half million customers. If even 10 percent of those filed claims that are objectionable how long would that take if they were limited to 300 claim objections per month?

MR. LIPSHIE: That is a good point, Your Honor. It would take a long, long time.

THE COURT: It would take a decade or more, maybe two decades. We can't do that. We just can't do that.

MR. LIPSHIE: That certainly goes to the docket issue. I understand that, Your Honor. But on the substantive issues there has got to be some cap. There is not at the moment.

THE COURT: Well, on the substantive issues we have a lot of -- there's a lot of times when litigation, parties file a motion for summary judgment on a threshold issue that they think might resolve the case and it doesn't, and it goes to trial. I can see in this scenario where they have threshold issues, as Ms. Brown pointed out, a late filed claim. So, they file an objection to a late filed claim.

In the event I overrule that objection I would say then the debtor has an obligation to come forward with all

substantive objections after that. Then we will deal with all of them at one time. They can't come back, and back, and back, and back. You get one shot. Get their initial threshold objection, if it gets overruled, they get another objection, and that is it, one more, and it has to include all the substantive objections. I think that deals with the issue of the serial litigation down the road for these folks.

A lot of these nobody is going to object. They are going to be disposed of without objection. There will be some, there will be some, but we can deal with those. If we end up with 10,000 objections in a month then we will have to spread them out over a period of time and we will deal with them. You know, I can sit here all day and we can go through them one at a time and get as many done as we can.

At this point I don't see how I can say to the debtors you can only do 300 per month and you have to put every single possible objection in which then requires these claimants to come in and respond to that which is going to be a burden on them. There might be a simple way to dispose of the issue upfront.

So, I didn't give Ms. Brown a chance to respond to you, but for these reasons I think I am going to overrule the objection, but I am going to put those limitations on it: one, --

MS. BROWN: Your Honor, can I just --

THE COURT: Yes, go ahead.

MS. BROWN: Kim Brown again, Your Honor. So, I would just like to clarify with respect to the multiple bites at the apple. I certainly appreciate where Your Honor is coming from. I just want to distinguish between non-substantive claims objections which are not limited in having to -- like you can file late filed duplicate, no supporting documents. Those objections are deemed non-substantive under the rule and there is no limitation with respect to those.

Perhaps the example I was providing for you in connection with, you know, knocking out one of the others was not the best for this particular scenario. What I think we would -- and I understand Your Honor wanting to ensure we're not taking multiple bites at the apple over substantive objections, but if we can knock out a substantive -- I would ask that if we could have at least two bites on a substantive objection with one carve-out.

So, the substantive objection, so let's say our initial threshold issue often times relates to we have no evidence in our books and records. So, that would be the initial one. We would try to, you know, knock off of the first case. And if we can get that summarily dismissed, great. If we can't then on the second objection then we have to come forward. We will continue our diligence, everything we need to do, and bring forth every single potential

substantive objection. It would be exclusive of the non-substantive objection world.

The only caveat I would ask that we can do a carve-out for relates to know your customer guidelines. So, as Your Honor may recall in our bar date process not only do customers need to file a valid bar date, a valid claim, but they also need to provide valid know your customer guidelines.

You know, the crypto industry is known for there being some players, not all, that operate a little shady. So, it was imperative to the debtors that there were folks who were not utilizing the claims process either through selling their claim or otherwise to launder money or, otherwise, commit bad acts. So, knowing your customer is very important.

What I understand is that the plan is going to have certain deadlines for the know your customer information to be provided. I think this know your customer issue its novel. This isn't something that has come up in a lot of the bankruptcy cases. You know, we had done some digging, but did not find anything as to whether an objection related to failure to meet know you customer guidelines would either be a non-substantive objection. It's certainly not identified in the local rules as what can be a non-substantive objection.

At the same time we would like to move forward with

the substantive pieces and getting the substantive claims knocked out as soon as possible, but if we are only getting two bites of the apple, and then we get to plan confirmation, and a creditor fails to provide the requisite know your customer information we would like to have the flexibility to object later on to disallow the claim because, you know, whether they're a shady actor or what it might be that now that that has been vetted and they have failed to provide that.

So, if Your Honor is amenable, we would ask that we get two bites at the apple with respect to a substantive objection exclusive of an objection related to know your customer requirements.

THE COURT: What are the two bites for the substantive? You lost me on that.

MS. BROWN: No problem, sorry. So, we would have the opportunity to object to file an initial substantive objection that would try to dismiss it on threshold substantive issues like lack of books and records. Then to the --

THE COURT: Those are non-substantive.

MS. BROWN: Lack of books and records is actually a substantive objection under the rules.

THE COURT: Okay.

MS. BROWN: So, it's usually one of the easiest

ones to knock out which is why we're like we believe we can get summarily dismissed a number of these on substantive grounds. To the extent that that -- that we were not to prevail on that issue that we could then come back and file a second substantive objection and that substantive objection would identify every substantive grounds in which the debtors have a basis to seek disallowance of a specific claim.

THE COURT: Okay. On the issue of know your customer issue I would suggest looking at -- Judge Shannon has a crypto case.

MS. BROWN: Bittrex.

THE COURT: Bittrex, yes. He -- in order to receive -- in that case they were returning the crypto to the parties. In that case he said, well, you have to -- there is a form you have to fill out, kind of a know your customer kind of thing, if you don't fill it out you don't get your crypto back. That was a separate process from, kind of, the claim objection process which might be something you could use here, I don't know. It might be worth taking a look at to see if it is something that could be useful.

MS. BROWN: We certainly will take a look at that, but I know that in our bar date order we have included this requirement related to know your customer issues. I am thinking that perhaps there is a way that we can, you know, implement some provision in the plan that would address the

know you customer issue.

I just don't want there to be a scenario where we launch our two substantive objections and then we get to a point down the road where the creditor has failed to provide the know your customer information. We are then in a position where we can no longer seek to disallow that claim.

THE COURT: Okay. Mr. Lipshie.

MR. LIPSHIE: Your Honor, Jonathan Lipshie, Office of the United States Trustee.

Just to clarify, I think the Court is correct because Local Rule 3007-1, Subsection (d)(vi), it breaks out what substantive and non-substantive is. It clearly says non-substantive is -- (vi) is a claim that does not have a basis in the debtors' books and records. That is covered as non-substantive in the local rules.

So, I think the point is they make that objection because its non-substantive and then they go to substantive and they lay it all out. Just so it's clear I wanted to point that out.

MS. BROWN: So, pulling up the rule its not just that it has no basis in the books and records, but a non-substantive objection also has to have where they have failed to attach. If you read, a claim that does not have a basis in the debtors' books and records and does not include or attach sufficient information or documentation to constitute

prima facie evidence.

So, while I am referring to it as a books and records, the substantive objection is really a no liability based on the books and records which is separate and apart from a non-substantive objection whereas in the books and records we don't have everything and you didn't attach everything.

MR. LIPSHIE: The rule says what it says, Your Honor.

THE COURT: All right. Well, as I said, I am going to overrule the objection, but I do want to put guardrails on this including that we notify the -- for the customization of the notice we notify these folks that they don't have to appear in Court if they are objecting or they are responding on a pro se basis, that they can appear by Zoom.

I will give the debtors the opportunity for two bites. If you have a substantive claim objection that you can bring up front that you think is dispositive you can bring it. If you have a non-substantive claim you can bring that. Then once either one of those gets overruled you get one more shot and that is it, one more bite at the apple.

Does that make sense? Do you understand what I am saying?

MS. BROWN: I just want to make sure that I understand. So, we can file a non-substantive objection

based on whatever the grounds are. Typically, you know, you batch them by non-substantive here is all the late filed, here is all the duplicates. Are you suggesting that with respect to the non-substantive you want us to include every basis with respect --

THE COURT: No. If you have a non-substantive that you think is dispositive you can bring that. If you have a substantive claim that you think is dispositive you can bring that. If either one of those gets overruled you get one more shot at a substantive objection. That is it.

MS. BROWN: Thank you. That does not impair us in the event that there is a know your customer issue.

THE COURT: Yeah, the know your customer issue, I think, is a separate issue that is something that we have to do in this case given the nature of the business we're involved with here.

MS. BROWN: Certainly. I'm sure that is something that we can clean up in the plan process. Thank you, Your Honor. I appreciate the clarification.

THE COURT: So, the parties should meet and confer and come up with an appropriate form of order.

Mr. Lipshie, did you want to --

MR. LIPSHIE: No.

THE COURT: Okay. We will get that entered as soon as it gets uploaded.

I didn't ask about -- do we have a final version of the order uploaded for the first issue that we talked about this morning? I did see the blackline for the change, but I didn't know if there was a final one.

MS. BROWN: If it has not already been uploaded it will be as we speak.

THE COURT: Thank you. Anything else?

MR. LANDIS: That's it, Your Honor.

MS. SARKESSIAN: Your Honor, if I could find out if counsel for the Emergent Debtor is present or on the phone.

MR. LANDIS: The Emergent matter, Your Honor, has been --

MS. SARKESSIAN: No, I know. I wanted to -- Your Honor, we wanted to know -- for the record, Juliet Sarkessian on behalf of the U.S. Trustee. We had spoken to Emergent, debtors' counsel about scheduling a status conference not on the DIP financing motion, but on a different issue which is currently the fee examiner order. It was entered prior to the Emergent case being jointly administered with the rest of the FTX debtors.

So, Morgan Lewis, who is Emergent's counsel, currently is not covered by the fee examiner order. We would like to have a status conference to discuss that matter and we wanted to know if we could just add that to the next omnibus hearing date.

MR. ZIEGLER: Your Honor, Matthew Ziegler of Morgan Lewis for the Emergent debtor. That is totally fine with us. We are available, I believe it's, November 15th to have that status conference.

MS. SARKESSIAN: If that would be okay with Your Honor.

THE COURT: Yeah, unless we have -- do we have -- are you guys talking with the PLS folks about rescheduling the oral argument on a motion to dismiss? I want to try to limit the number of hearings if we can.

MR. LANDIS: Thank you, Your Honor. Adam Landis, Landis Rath & Cobb, for the debtors. Yes, we have been in contact with those parties. They have agreed to the November 15th date, so that should be going forward at that time.

THE COURT: Is that the next omnibus date?

MR. LANDIS: That is the next omnibus hearing.

THE COURT: Okay. Then we can add this to the next omnibus as well.

MS. SARKESSIAN: Thank you, Your Honor.

MR. ZIEGLER: Your Honor, while I'm up here could I give you 30 seconds on the Emergent DIP motion that was continued from today.

THE COURT: Well, it's not on for today. What do you want to talk about.

MR. ZIEGLER: I wanted to give you a status update.

We were unable to surmount the logistical hurdles of having our declarant available today. And as Your Honor will note, the U.S. Trustee has posted some objections. We have resolved objections from FTX and from BlockFi. So, we are in touch with Chambers and we will find a replacement date when our witness can be available.

THE COURT: Okay.

MR. ZIEGLER: We would ask Your Honor if it is all possible that she be allowed to participate by Zoom just because she is based in the Cayman Islands and there are very few resources in the estate right now, but we will post that request to Chambers at the appropriate time.

THE COURT: Yeah, I did have -- this came up in one of my other hearings in Mallinckrodt, we are post-COVID now which means if you want a witness to appear remotely you have to put it in writing and explain why pursuant to Rule 43. Rule 43 says you only get it if it's for -- it has to be under compelling circumstances, for good reason under compelling circumstances, good cause, something like that. So, you know, I have to make it on a case-by-case basis as to whether or not it is or is not compelling circumstances.

MR. ZIEGLER: Understood, Your Honor. We will review the order and make that submission if appropriate.

THE COURT: Thank you.

MR. ZIEGLER: Thank you.

MR. LANDIS: Last for the record, Your Honor, Adam Landis for the debtors again from Landis Rath & Cobb. We have been doing our best to let all parties know that we are post-COVID to remind parties of Your Honor's Chambers rules and procedures and to ensure that if people want to submit declarations that they have the declarants in Court prepared for cross-examination.

We will continue to do that, but I think it bears repeating on the record for those who are listening and we will keep doing our job to let people know that they have got to be here.

THE COURT: Thank you. Anything else before we adjourn.

(No verbal response)

THE COURT: Thank you all very much. We are adjourned.

(Proceedings concluded at 12:02 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ Tracey J. Williams October 25, 2023

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable

/s/ Coleen Rand October 25, 2023

Coleen Rand, CET-341

Certified Court Transcriptionist

For Reliable